

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express & Priority Mail
Priority Mail Express & Priority Mail Contract 24

Docket No. MC2016-27

Competitive Product Prices
Priority Mail Express & Priority Mail Contract 24
(MC2016-27)
Negotiated Service Agreement

Docket No. CP2016-33

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
REQUEST TO ADD PRIORITY MAIL EXPRESS & PRIORITY MAIL
CONTRACT 24 TO THE COMPETITIVE PRODUCT LIST

(December 16, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2860.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express & Priority Mail Contract 24 to the competitive product list.²

The Postal Service's Request includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 USC 3633(a), and proposed changes to the Mail Classification Schedule (MCS) competitive product list with the additions underlined. In addition, the Request includes a public (redacted) version of Governor's Decision No. 11-6 and related analysis, and Priority Mail Express & Priority Mail shipping services Contract 24. The Postal Service also filed under seal the full

¹ Order No. 2860, Notice and Order Concerning the Addition of Priority Mail Express & Priority Mail Contract 24 to the Competitive Product List, December 9, 2015.

² Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 24 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 8, 2015 (Request).

(unredacted) text of Contract 24, Governor's Decision No. 11-6, and a supporting financial model estimating the contract value during the first year.

The Postal Service states that Priority Mail Express & Priority Mail Contract 24 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and proposed classification for Contract 24 are authorized by Governors' Decision No. 11-6.³ The Postal Service further asserts that the Statement provides support for adding Contract 24 to the competitive product list and the compliance of Contract 24 with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

The effective date of Contract 24 is two business day following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 4 (Article II). Contract 24 is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days' prior written notification, or other specific events. *Id.*, Attachment B at 4-5 (Article III).

COMMENTS

The Public Representative has reviewed the Postal Service's Request, Priority Mail Express & Priority Mail Contract 24, the Statement of Supporting Justification, and financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Contract 24 should be classified as a competitive product and added to the competitive product list. In addition, Contract 24 is projected to generate sufficient revenues to cover its attributable costs in first year and thereby satisfy 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 24 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Express & Priority Mail Contract 24 to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), competitive prices must ensure that each competitive product will cover its attributable costs; ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service; and, not result in the subsidization of competitive products by market dominant products. Based upon a review of the financial model, it appears the Postal Service’s negotiated prices for Contract 24 should generate sufficient revenues to cover its attributable costs during first year and therefore satisfy the requirements of 39 U.S.C. § 3633(a).

As indicated above, Contract 24 is expected to remain in effect for a period of three years. Contract 24 includes a mechanism for the adjustment of contract prices during the second and third years. Adjustments to contract prices are the lesser of a) the previous year’s prices plus the most recent average price increases of general applicability for Priority Mail Express Commercial Plus and Priority Mail Commercial Plus or b) the previous year’s prices plus an amount determined by formula.⁴ Increases in Commercial Plus prices will result in an increase in contract prices. More importantly, however, if the Postal Service does not seek a price adjustment, or proposes a decrease in Commercial Plus prices, there will be no change in contract prices or contract prices will decrease. Under such circumstances, if Commercial Plus prices rise

⁴ Contract 24 also provides for the quarterly adjustment of contract prices for Priority Mail contract packages in response to changes in the mail mix. To the extent Priority Mail contract packages fall below an average density or exceed an average zone, as determined by quarterly Postal Service sampling, contract prices will increase. Request, Attachment B at 3 (Article I.F.2-4)

at a slower pace than the increase in contract costs, or such prices decrease during the term of the contract, the cost coverage for Contract 24 would decrease in years two and three.

This concern is mitigated somewhat by the fact that the Postal Service must file revenue and cost data for Contract 24 in its Annual Compliance Report. This data will permit the Commission to review the financial performance of Contract 24 in its Annual Compliance Determination (ACD) for compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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